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C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 001095

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SUBJECT: SUPREME COURT UPHOLDS COMPTROLLER'S INELIGIBLES
LIST

CARACAS 00001095 001.2 OF 002

Classified By: POLITICAL COUNSELOR FRANCISCO FERNANDEZ,
REASONS 1.4 (B) AND (D)

11. (C) Summary. The Supreme Court ruled August 5 that the Comptroller may declare persons ineligible to run for office based on administrative sanctions. The ruling essentially ends the opposition's effort to obtain collective judicial relief from a government measure that disproportionately affects opposition candidates. The opposition intends to hold an August 9 demonstration in protest and will continue to seek a "stay" from the Inter-American Commission of Human Rights (IACHR). In the near-term, the ruling knocks the opposition's best candidates out of the Caracas mayoral race and three close gubernatorial races. Long-term, it may help elevate popular Chacao Mayor Leopoldo Lopez into a more prominent national role. The Supreme Court's decision was largely expected given the politicization of the judiciary. The still very much fractured opposition may find a silver lining in that the ruling removes one of the factors that fostered division within its ranks. End Summary.

Supreme Court Ruling

12. (SBU) The Supreme Court ruled unanimously August 5 that the law that gives the Comptroller authority to declare public officials ineligible to run for office is constitutional. The opposition argued unsuccessfully that three articles of the 1999 Constitution prohibited the suspension of citizen rights, including the right to run for office, absent a judicial sentence. Comptroller Clodosbaldo Russian declared 272 current and former public officials, including prominent opposition gubernatorial and mayoral candidates, ineligible to run for varying periods of time based on administrative infractions (not court rulings) earlier this year. The Supreme Court decision may not be appealed in Venezuela.

13. (C) Some opposition pre-candidates, including Miranda State gubernatorial Enrique Mendoza and Tachira State gubernatorial candidate William Mendez, are still seeking individual legal relief in the Political-Administrative Tribunal. In that court, these candidates are not contesting the constitutionality of the Comptroller's authority, but rather the validity of applying such sanctions in their particular cases. NA Deputy Francisco Torrealba told PolCouns August 5 before the Supreme Court ruling that he would not be surprised if that court provided judicial relief in a few individual cases "to send a signal on its judicial

autonomy."

¶4. (SBU) Caracas mayoral candidate and Chacao Mayor Leopoldo Lopez held an August 6 rally in Chacao to protest the Supreme Court decision. He has also invited the diplomatic corps to an August 8 meeting on this issue. Lopez and other prominent opposition leaders are calling for a march on the National Electoral Commission on August 9. Opposition marches on this issue to date have failed to attract sizable crowds. Lopez told the local media that he does not need public office to work for a "democratic alternative" and will remain politically active in the opposition as a private citizen.

Implications

¶5. (C) International: The Supreme Court ruling exhausts the opposition's efforts within Venezuela to win collective relief from the Comptroller's ineligible candidates list. While this is a major domestic defeat, some in the opposition hope that the Inter-American Commission of Human Rights (IACHR) may soon issue a "stay." They are arguing to the IACHR that democratic participation rights are enshrined in Article 23 of the American Convention of Human Rights. Article 23 states that governments may only regulate voting and participation rights based on "age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings." The Supreme Court cited Article 32 of the same Convention, which states "The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society," in support of its decision.

CARACAS 00001095 002.2 OF 002

¶6. (C) Domestic: Unless opposition candidates secure individual relief from the Political-Administrative Tribunal, the Supreme Court ruling will ensure that the opposition's best Caracas mayoral candidate and best gubernatorial candidates in three winnable states will be ineligible to run. The opposition now has little choice but to rally behind their second-best and less competitive candidates in those close races. In the long term, affected politicians, especially Leopoldo Lopez, may accrue greater public appeal as a result of the Comptroller's unpopular administrative sanctions. Lopez and other affected politicians will nevertheless have to work hard to stay politically relevant once out of office. Lopez told the Ambassador that if he is unable to run for the Caracas mayorship, he will campaign on behalf of opposition candidates nation-wide.

Comment

¶7. (C) Venezuela's judiciary is politicized, so the Supreme Court ruling in favor of the BRV comes as no surprise. At the same time, it removes one of the factors that was dividing the opposition. Not all parties, for tactical reasons, rallied equally to the cause of the ineligible candidates, while some opposition leaders faulted ineligible candidates for not dropping out voluntarily. So far, the day after candidate registration began, and only six days before registration closes, the opposition has announced only 17 consensus gubernatorial candidates in 22 states and 154 consensus mayoral candidates in over 300 municipalities. One opposition leader told us the opposition will try to forge consensus candidates in most of the remaining races in the run-up to the November elections by persuading less popular candidates to drop out. We expect this will diminish the opposition's chances considerably in those races.

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